

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

WALTER T. VAN HORN,
Appellant.

No. 2 CA-CR 2018-0033
Filed October 15, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201601709
The Honorable Richard T. Platt, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Michelle Hogan, Assistant Attorney General, Phoenix
Counsel for Appellee

Michael Villarreal, Florence
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Walter Van Horn appeals from his conviction for cruelty to animals, designated as a class one misdemeanor, on the ground of insufficient evidence. We affirm.

Factual and Procedural Background

¶2 Van Horn and his wife lived in a trailer at a small trailer park from August 2015 until they were evicted on May 6, 2016. They had left their home on May 2 to be with their daughter, who was in the hospital. But Van Horn testified they had left food and water for their pets, which he said included only two dogs, a bird, and a sixteen-year-old white cat.

¶3 On May 7, 2016, J.H. was assisting in cleaning out the trailer after the eviction when a black cat emerged from underneath the kitchen sink and stopped in the middle of the kitchen area, where it laid down and “peed itself.” She told the trial court the cat was “near[] to death and it was just sitting in its own pee, it was stinky, it had bugs. It was horrible.” She also testified that she and other cleaners were wearing “raincoats,” “hair nets, masks, [and] gloves because it was disgusting” in the trailer, where they found “dead bugs,” garbage, a litter box completely full of feces, urine stains, and urine-soaked newspaper under a bed that had to be “scrape[d] . . . off.” The workers also found what appeared to be a medium-sized bag of cat food.

¶4 After she “checked to make sure [the cat] was still breathing,” J.H. “called animal control,” and Officer Casey Sheahan, an animal control officer for the Apache Junction Police Department, responded to the call. After he was told the house was infested, and because he had no “personal protective equipment,” Officer Sheahan gave J.H. a crate “to take the cat out with,” and she placed the cat in the crate and carried it out to him.

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¶5 Officer Sheahan testified the cat was in “desperate” need of medical attention, and he took it to a veterinary clinic, where it was seen by Dr. Eva Decozio. Decozio testified the cat was “very malnourished,” “barely alive,” and “covered in feces.” The female cat had a “very severe oral infection” and ulcers in its mouth, as well as pyometra, a “life threatening situation” involving its uterus—but it was not a candidate for emergency surgery because it was “just so sick.” Despite efforts to revive it with “two or three days of intensive fluid therapy and antibiotics,” its condition had only worsened, and the decision was made “to humanely euthanize her because she was suffering.”

¶6 Based on her examination of the animal, including an odor of cigarette smoke that was beyond “pungent” and evidence of chronic conditions that would have existed for a minimum of three weeks, Decozio expressed the opinion that this was a case of “clear neglect” involving an indoor cat that lived in a household with smokers. She told the trial court domesticated cats “seek [a] quiet area and withdraw” when they are near death, and she “[a]bsolutely” agreed that “a cat knowing that [it’s at] the end of its life would retire to somewhere it feels safe.”

¶7 D.D. and K.D. are resident managers of the trailer park where the cat was found. From January 2016 until after the Van Horns’ eviction, they lived in a trailer approximately twenty-five feet from the Van Horns’, with a direct view of that trailer’s front window. During that time, they observed two black cats enter and leave the Van Horns’ trailer through an open window on a daily basis, at times entering the trailer while the Van Horns were home and sitting on their porch. K.D. also testified that she was at the trailer on May 7, 2016, and that “It was filthy, it had live cockroaches, it smelled like smoke really bad. It just had a foul odor and bugs were everywhere.”

¶8 At the close of a non-jury trial, the trial court took the matter under advisement. In November 2017, it issued its ruling finding Van Horn guilty of cruelty to animals, designated as a class one misdemeanor, *see* A.R.S. § 13-604(B)(1), and, in December, it suspended the imposition of sentence and placed him on a twelve-month term of probation. This appeal followed.

Discussion

¶9 On appeal, Van Horn argues the evidence was insufficient to support his conviction because “Officer Sheahan never entered the trailer

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to personally observe under and near the sink where the cat was found” and “never established the trailer as a smoker’s residence,” and because the Van Horns “were at no time identified as smokers.” He also challenges the credibility of a photograph admitted into evidence, as he did at trial, and he relies on his own testimony that he and his wife “never owned black cats and would not have known that a black cat entered the trailer while they were away.”

¶10 We review de novo the sufficiency of the evidence to support a conviction, “resolv[ing] any conflicts in the evidence against the defendant and view[ing] all facts in the light most favorable to supporting the verdict.” *State v. Pena*, 235 Ariz. 277, ¶ 5 (2014). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, ¶ 16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). “[I]n reviewing the sufficiency of the evidence, we do not distinguish circumstantial from direct evidence,” and circumstantial evidence alone may be sufficient to support a conviction. *State v. Borquez*, 232 Ariz. 484, ¶ 11 (App. 2013).

¶11 To convict Van Horn of cruelty to animals, the state was required to prove that he “[i]ntentionally or knowingly subject[ed] any animal under [his] custody or control to . . . abandonment that results in serious physical injury to the animal.” A.R.S. § 13-2910(A)(8). D.D. and K.D., Van Horn’s neighbors, testified they observed the cat entering his trailer on a daily basis for a matter of months, J.H. testified that she found the cat, near death, after Van Horn had moved out of the trailer, and Officer Sheahan testified that J.H. brought the cat, from inside Van Horn’s trailer, and delivered it to him.

¶12 Van Horn appears to dispute this testimony by suggesting he had no knowledge of the black cat in his trailer and by tacitly questioning the credibility of the state’s witnesses. But these arguments do not support a claim of insufficient evidence. *See State v. Guerra*, 161 Ariz. 289, 293 (1989) (“If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant.”). Essentially, Van Horn is asking this court to reweigh the evidence, which we will not do. *See State v. Tucker*, 231 Ariz. 125, ¶ 27 (App. 2012).

¶13 We agree with the state that substantial evidence, and reasonable inferences therefrom, support the trial court’s implicit findings

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that Van Horn had custody and control of this animal—a cat he had provided with food and shelter for a period of months—and that he knowingly or intentionally abandoned the cat, resulting, ultimately, in its euthanized death.

Disposition

¶14 Van Horn's conviction for cruelty to animals was supported by substantial evidence. Accordingly, his conviction and disposition of probation are affirmed.